

AMENDED IN SENATE APRIL 20, 2016

**SENATE BILL**

**No. 1063**

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**Introduced by Senator Hall**

*(Coauthors: Senators Glazer, Hueso, and Mitchell)*

*(Coauthors: Assembly Members Brown, Campos, Gipson,  
Roger Hernández, McCarty, and Ridley-Thomas)*

February 16, 2016

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An act to amend Sections 1197.5 and 1199.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1063, as amended, Hall. Conditions of employment: wage differential: race or ethnicity.

Existing law prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, unless the employer demonstrates that specific, reasonably applied factors account for the entire wage differential. Existing law authorizes an employee paid lesser wages in violation of this prohibition to file a complaint with the Division of Labor Standards Enforcement, and authorizes the employee, the division, or the Department of Industrial Relations to commence a civil action for the wages the employee was deprived of because of the violation, interest on those wages, and liquidated damages. Under existing law, an employer or other person who violates or causes a violation of that prohibition, or who reduces the wages of any employee in order to comply with that prohibition, is guilty of a misdemeanor.

This bill would expand that prohibition to also prohibit an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, as specified above. By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1197.5 of the Labor Code is amended to  
2 read:  
3     1197.5. (a) An employer shall not pay any of its employees  
4 at wage rates less than the rates paid to employees of the opposite  
5 sex for substantially similar work, when viewed as a composite of  
6 skill, effort, and responsibility, and performed under similar  
7 working conditions, except where the employer demonstrates:  
8     (1) The wage differential is based upon one or more of the  
9 following factors:  
10     (A) A seniority system.  
11     (B) A merit system.  
12     (C) A system that measures earnings by quantity or quality of  
13 production.  
14     (D) A bona fide factor other than sex, such as education,  
15 training, or experience. This factor shall apply only if the employer  
16 demonstrates that the factor is not based on or derived from a  
17 sex-based differential in compensation, is job related with respect  
18 to the position in question, and is consistent with a business  
19 necessity. For purposes of this subparagraph, “business necessity”  
20 means an overriding legitimate business purpose such that the  
21 factor relied upon effectively fulfills the business purpose it is  
22 supposed to serve. This defense shall not apply if the employee  
23 demonstrates that an alternative business practice exists that would  
24 serve the same business purpose without producing the wage  
25 differential.

1 (2) Each factor relied upon is applied reasonably.

2 (3) The one or more factors relied upon account for the entire  
3 wage differential.

4 (b) An employer shall not pay any of its employees at wage  
5 rates less than the rates paid to employees of another race or  
6 ethnicity for substantially similar work, when viewed as a  
7 composite of skill, effort, and responsibility, and performed under  
8 similar working conditions, except where the employer  
9 demonstrates:

10 (1) The wage differential is based upon one or more of the  
11 following factors:

12 (A) A seniority system.

13 (B) A merit system.

14 (C) A system that measures earnings by quantity or quality of  
15 production.

16 (D) A bona fide factor other than race or ethnicity, such as  
17 education, training, or experience. This factor shall apply only if  
18 the employer demonstrates that the factor is not based on or derived  
19 from a race- or ethnicity-based differential in compensation, is job  
20 related with respect to the position in question, and is consistent  
21 with a business necessity. For purposes of this subparagraph,  
22 “business necessity” means an overriding legitimate business  
23 purpose such that the factor relied upon effectively fulfills the  
24 business purpose it is supposed to serve. This defense shall not  
25 apply if the employee demonstrates that an alternative business  
26 practice exists that would serve the same business purpose without  
27 producing the wage differential.

28 (2) Each factor relied upon is applied reasonably.

29 (3) The one or more factors relied upon account for the entire  
30 wage differential.

31 (c) Any employer who violates subdivision (a) or (b) is liable  
32 to the employee affected in the amount of the wages, and interest  
33 thereon, of which the employee is deprived by reason of the  
34 violation, and an additional equal amount as liquidated damages.

35 (d) The Division of Labor Standards Enforcement shall  
36 administer and enforce this section. If the division finds that an  
37 employer has violated this section, it may supervise the payment  
38 of wages and interest found to be due and unpaid to employees  
39 under subdivision (a) or (b). Acceptance of payment in full made  
40 by an employer and approved by the division shall constitute a

1 waiver on the part of the employee of the employee's cause of  
2 action under subdivision (h).

3 (e) Every employer shall maintain records of the wages and  
4 wage rates, job classifications, and other terms and conditions of  
5 employment of the persons employed by the employer. All of the  
6 records shall be kept on file for a period of three years.

7 (f) Any employee may file a complaint with the division that  
8 the wages paid are less than the wages to which the employee is  
9 entitled under subdivision (a) or (b) or that the employer is in  
10 violation of subdivision (k). The complaint shall be investigated  
11 as provided in subdivision (b) of Section 98.7. The division shall  
12 keep confidential the name of any employee who submits to the  
13 division a complaint regarding an alleged violation of subdivision  
14 (a), (b), or (k) until the division establishes the validity of the  
15 complaint, unless the division must abridge confidentiality to  
16 investigate the complaint. The name of the complaining employee  
17 shall remain confidential if the complaint is withdrawn before the  
18 confidentiality is abridged by the division. The division shall take  
19 all proceedings necessary to enforce the payment of any sums  
20 found to be due and unpaid to these employees.

21 (g) The department or division may commence and prosecute,  
22 unless otherwise requested by the employee or affected group of  
23 employees, a civil action on behalf of the employee and on behalf  
24 of a similarly affected group of employees to recover unpaid wages  
25 and liquidated damages under subdivision (a) or (b), and in addition  
26 shall be entitled to recover costs of suit. The consent of any  
27 employee to the bringing of any action shall constitute a waiver  
28 on the part of the employee of the employee's cause of action  
29 under subdivision (h) unless the action is dismissed without  
30 prejudice by the department or the division, except that the  
31 employee may intervene in the suit or may initiate independent  
32 action if the suit has not been determined within 180 days from  
33 the date of the filing of the complaint.

34 (h) ~~Any~~ An employee receiving less than the wage to which the  
35 employee is entitled under this section may recover in a civil action  
36 the balance of the wages, including interest thereon, and an equal  
37 amount as liquidated damages, together with the costs of the suit  
38 and reasonable attorney's fees, notwithstanding any agreement to  
39 work for a lesser wage.

1 (i) A civil action to recover wages under subdivision (a) or (b)  
2 may be commenced no later than two years after the cause of action  
3 occurs, except that a cause of action arising out of a willful  
4 violation may be commenced no later than three years after the  
5 cause of action occurs.

6 (j) If an employee recovers amounts due the employee under  
7 subdivision (c), and also files a complaint or brings an action under  
8 subdivision (d) of Section 206 of Title 29 of the United States  
9 Code which results in an additional recovery under federal law for  
10 the same violation, the employee shall return to the employer the  
11 amounts recovered under subdivision (c), or the amounts recovered  
12 under federal law, whichever is less.

13 (k) (1) An employer shall not discharge, or in any manner  
14 discriminate or retaliate against, any employee by reason of any  
15 action taken by the employee to invoke or assist in any manner  
16 the enforcement of this section. An employer shall not prohibit an  
17 employee from disclosing the employee's own wages, discussing  
18 the wages of others, inquiring about another employee's wages,  
19 or aiding or encouraging any other employee to exercise his or her  
20 rights under this section. Nothing in this section creates an  
21 obligation to disclose wages.

22 (2) Any employee who has been discharged, discriminated or  
23 retaliated against, in the terms and conditions of his or her  
24 employment because the employee engaged in any conduct  
25 delineated in this section may recover in a civil action reinstatement  
26 and reimbursement for lost wages and work benefits caused by  
27 the acts of the employer, including interest thereon, as well as  
28 appropriate equitable relief.

29 (3) A civil action brought under this subdivision may be  
30 commenced no later than one year after the cause of action occurs.

31 SEC. 2. Section 1199.5 of the Labor Code is amended to read:

32 1199.5. Every employer or other person acting either  
33 individually or as an officer, agent, or employee of another person  
34 is guilty of a misdemeanor and is punishable by a fine of not more  
35 than ten thousand dollars (\$10,000), or by imprisonment for not  
36 more than six months, or by both, who willfully does any of the  
37 following:

38 (a) Pays or causes to be paid any employee a wage less than the  
39 rate paid to an employee of another sex, race, or ethnicity, as  
40 required by Section 1197.5.

1 (b) Reduces the wages of any employee in order to comply with  
 2 Section 1197.5.  
 3 No person shall be imprisoned pursuant to this section except  
 4 for an offense committed after the conviction of the person for a  
 5 prior offense pursuant to this section.  
 6 SEC. 3. No reimbursement is required by this act pursuant to  
 7 Section 6 of Article XIII B of the California Constitution because  
 8 the only costs that may be incurred by a local agency or school  
 9 district will be incurred because this act creates a new crime or  
 10 infraction, eliminates a crime or infraction, or changes the penalty  
 11 for a crime or infraction, within the meaning of Section 17556 of  
 12 the Government Code, or changes the definition of a crime within  
 13 the meaning of Section 6 of Article XIII B of the California  
 14 Constitution.  
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 17 CORRECTIONS:  
 18 Heading—Line 4.  
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